

SENATE BILL NO. 209

INTRODUCED BY WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WHEN RECOVERY IS PRECLUDED BECAUSE OF FRAUDULENT OR MATERIAL MISREPRESENTATIONS IN APPLICATIONS FOR INSURANCE POLICIES OR ANNUITY CONTRACTS; REVISING THE PROHIBITION AGAINST POSTCLAIM UNDERWRITING BY AN INSURER, HEALTH SERVICE CORPORATION, OR HEALTH MAINTENANCE ORGANIZATION; AND AMENDING SECTIONS 33-15-403 AND 33-18-215, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-15-403, MCA, is amended to read:

"33-15-403. Representations in applications -- recovery precluded if fraudulent or material. (1)

All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations for an insurance policy or annuity contract by or on behalf of the insured or annuitant are considered representations and not warranties.

(2) Misrepresentations, omissions, concealment of facts, and incorrect statements do not prevent a recovery under the policy or contract unless:

(a) fraudulent; or

(b) (i) material either to the acceptance of the risk or to the hazard assumed by the insurer; ~~or~~ and

~~(e)(ii)~~ the insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

(3) Subsection ~~(2)(e)~~ (2)(b) does not apply to nonrenewal or discontinuation of group health insurance offered in connection with a group health plan in the small group market or large group market, as those terms are defined in 33-22-140."

Section 2. Section 33-18-215, MCA, is amended to read:

"33-18-215. Postclaim underwriting prohibited -- condition. (1) An insurer, health service

1 corporation, or health maintenance corporation shall determine a person's eligibility for coverage based upon
2 an evaluation of the risk presented prior to the issuance of the disability policy, certificate, or subscriber contract.

3 (2) An insurer, health service corporation, or health maintenance organization may not place an
4 elimination rider on or rescind coverage provided by a disability policy, certificate, or subscriber contract after
5 a ~~disability~~ policy, certificate, or ~~subscriber~~ contract has been issued unless the insured has made a material
6 misrepresentation or fraudulent misstatement on the application or has failed to pay the premium when due.

7 (3) The remedies provided in subsection (2) for a material misrepresentation or fraudulent misstatement
8 on an application are not available to an insurer, health service corporation, or health maintenance organization
9 if the information revealing the INSURER, HEALTH SERVICE CORPORATION, OR HEALTH MAINTENANCE ORGANIZATION
10 DID NOT EXERCISE ORDINARY DUE DILIGENCE TO DETERMINE A material misrepresentation or fraudulent misstatement
11 was readily available to the insurer, health service corporation, or health maintenance organization at the time
12 that the disability policy, certificate, or subscriber contract was issued."

13 - END -